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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 726

ROBERT MAXWELL WATTS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS

The first opinion of the Court of Appeals (R. 367-372) is reported at 212 F. 2d 275. The *per curiam* order of this Court is reported at 348 U. S. 905. The second opinion of the Court of Appeals (Pet. App. 2-8) is not yet reported.

JURISDICTION

The original judgment of the Court of Appeals was entered on April 16, 1954. (R. 373.) On Jan-

uary 10, 1955, a writ of certiorari was granted (Pet. App. 1), and a judgment entered vacating the judgment below and remanding the case to the Court of Appeals (Pet. App. 2). On March 16, 1955, the Court of Appeals entered the second judgment affirming petitioner's conviction, of which review is now sought. (Pet. App. 9.) The petition for a writ of certiorari was filed on April 15, 1955. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

STATEMENT

The Court of Appeals, by judgment entered April 16, 1954, affirmed the conviction of petitioner. This Court, on January 10, 1955, granted certiorari in this and a number of other cases presenting "net worth" questions, and remanded to the Court of Appeals "for consideration in the light of *Holland* v. *United States*, *Friedberg* v. *United States*, *Smith* v. *United States*, and *United States* v. *Calderon*, decided by this Court December 6, 1954."

In compliance with the mandate of this Court, the Court of Appeals reconsidered the case and again affirmed the conviction of petitioner.

Inasmuch as the original petition filed in this case on June 14, 1954 (No. 135, this Term), is in most respects identical with the present petition, the Government will rely upon its original brief in opposition, except in those instances where petitioner now asserts that the Court of Appeals did not properly apply the principles set down in *Holland* v. *United States*, 348 U. S. 121. Accordingly, the

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Court is respectfully referred to the Government's original brief in opposition (No. 135, this Term) for the questions presented, statute involved, statement of facts and argument concerning the issues which have already been presented.

ARGUMENT

The present petition repeats the questions presented earlier this Term (in No. 135), except that the questions originally numbered 3(a) and (b), concerning the net worth issues, have been omitted. In their stead, petitioner preserves in a footnote (fn. 1, Pet. 2), in the event certiorari is granted, the contention that the trial court's net worth instruction, sustained by the court below, "conflicts with the principles and the requirements laid down by this Court in *Holland* v. *United States*, 348 U. S. 121." The assertion is not documented and is not substantial.

As the opinion below makes clear (Pet. App. 4-5, 8), the net worth evidence in this case served merely to corroborate the proof of specific items of unreported income. Referring to this corroborative evidence, the trial court made clear to the jury that increases in net worth could be deemed significant only if they represented "taxable income" rather than non-taxable receipts like gifts or inheritances or unrealized gain resulting from appreciation in the value of assets (R. 246-247). These instructions, never even questioned when the case was first appealed to the court below, afforded ample guidance for the jury in the circumstances of this case.

It is clear, moreover, from the petition itself, that the critical issues at the trial related to specific items of unreported income rather than to the evidence of increases in net worth.

Again in a non-specific manner, while agreeing that the opinion of the court below "contains no explicit conflict with the views of this Court", petitioner contends (Pet. 2, fn. 1) that the Court of Appeals "has predicated its conclusion in large measure on a factually erroneous analysis of petitioner's financial statements." We submit, to the contrary, that in reconsidering the case pursuant to this Court's mandate, the court below (see Pet. App. 5-7) actually viewed the evidence in the most favorable light possible for petitioner, giving effect to his self-serving statements which could well have been rejected by the jury.

Finally, in his argument that wilfulness cannot be inferred from a mere understatement of income, petitioner relies (Pet. 17) on part of this Court's discussion of wilfulness in *Holland,* but overlooks proof of acts here similar to those referred to in the remaining part of this Court's statement, 348 U. S. at 139, which were found sufficient to justify the jury's inference of wilfulness. For example, there was extensive evidence in this case of failure to record income in petitioner's books and shifting attempts, all of which the jury could readily have found false, to explain such failures. See Br. in Opp., No. 135, this Term, pp. 5-10, 12-14. This evidence amply sustained a finding of wilfulness.

CONCLUSION

The decision below properly applied the principles set down by this Court in *Holland* and is in full compliance with the mandate of this Court. The petition should be denied.

Respectfully submitted,

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MAY, 1955.

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